FILE COPY.

FILE
SEP 6
JAMES H. McKENN

SUPREME COURT OF THE UNITED STATES.

SUSAN A. RAMSAY,

Plaintiff in Error,

vs.

THE TACOMA LAND COMPANY; and PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY and JOHN C. BULLITT, Trustee of the Estate of Charles B. Wright, deceased,

Defendants in Error.

No. 138.
(File No. 19,129.)

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF PLAINTIFF IN ERROR.

1. ON MOTION TO DISMISS.
2. ON THE MERITS.

JOHN F. SHAFROTH,
JOHN C. STALLCUP,
J. W. A. NICHOLS,
Counsel for Plaintiff in Error.
308 Equitable Building, Tacoma, Washington.

SUPREME COURT OF THE UNITED STATES.

SUSAN A. RAMSAY,

Plaintiff in Error,

vs.

THE TACOMA LAND COMPANY; and PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY and JOHN C. BULLITT, Trustee of the Estate of Charles B. Wright, deceased,

Defendants in Error.

No. 138.
(File No. 19,129.)

I.

ON THE MOTION TO DISMISS.

Plaintiff in error claimed the right to appropriate the land herein in controversy under the Federal Land Laws, to-wit, the homestead laws. The defendants in error claimed that the said homestead laws had been so modified, changed in effect, and superceded by the enactment of later statute, as to give to them the defendants, a "preference" or "superior right", to the same land as against plaintiff's homestead right The section, the effect of which is so disputed is Section 5, of the Act of Congress, approved March 3d, 1887. (24th Stat. at Large, page 557.) The State Supreme Court construed said section 5, as so modi-

fying and superceding the homestead laws as to give defendants the preference and superior rights by them claimed, and cancelling the homestead entry of plaintiff and decreeing title in defendants, after plaintiff's said entry duly made, and accepted by the Land Department, and after the full five year's residence upon said land and all provisions of the homestead laws fully complied with by plaintiff in error.

Defendant in error now argues that as the general effect of the homestead laws was not under construction, but only the effect of said section 5 of the act of 1887, and as plaintiff in error is not claiming under said section 5, but only under the homestead laws, therefore no jurisdiction attaches, even though by such construction the homestead laws are held to be so superceded as to cause us the loss of our homestead.

We are not aware that this identical question has been passed upon by this Court; but it has always been our impression that any construction of Federal statute which denied to a party to the suit the rights, privileges or immunities which he claimed under such statute (other jurisdictional features being present) would give him the right of review in this Court, regardless of whether the construction given were direct, as upon an immediate interpretation of its language; or indirect, as by passing upon the effect of some other statute upon the one claimed under, or otherwise. If the writ of review depends upon a direct construction of the terms of statute alone, regardless of the effect of other statutes claimed to control the same, then a State statute might nullify a Federal statute, and the rights therein guaranteed be lost with no right of review in

this Court. We can only say we think the proposition is not sound.

Defendant in error proceeds to argue on page 7 of its brief, that the State Court's decision was based upon an independent ground, not involving a Federal question, namely, that the State Court found "and in effect held," that the plaintiff in error had not acted in good faith.

We suggest in reply to this, that an examination of the record will show, 1st,—that the State Court's decision was not based upon such finding; and 2nd,—that no such finding was made; and 3d,—that the Court had no authority to make any such finding, as the facts in this case were all found by the Honorable Commissioner of the Land Department and the Honorable Secretary of the Interior, while on trial before them, and that their findings are conclusive, and that no question of plaintiff's good faith was ever raised until in defendant's brief on this motion to dismiss. But defendant shows on the next page of his brief (page 9, middle,) that no such question of fact arose or was passed upon, by reciting that the "sole question presented for decision and decided by the State Court was the construction of section 5, of the act of March 3d, 1887"!

Defendant in error criticises the fourth assignment of error as being based upon a construction of a State statute.

The error complained of is not in the construction of any statute but in the ignoring of the statute and the refusal of the State Court to accord to plaintiff in error her rights thereunder equally with other citizens of the State.

The statutes under which plaintiff in error claims rights that have been denied her, while accorded to all other citizens of the State in all other cases where the same

claims have been made, are sections 1052, and 1054, of Pierce's code, and the portions thereof pertinent here, read as follows:

(From sec. 1052). "When the notice of appeal is not given at the time when the judgment or order appealed from is rendered or made, it shall be served in the manner required by law for the service of papers in civil actions and proceedings, upon all parties who have appeared in the action or proceeding."

(And from section 1054.) "The appeal bond must be executed in behalf of the appellant by one or more sureties."

The appeal bond in this case was not executed on behalf of the appellant Land Company, by any surety.

The only persons named as obligors in the bond, are the trustees of the Wright estate.

And the surety in the said bond, expressly limits its liability to the default of the said trustees; the Land Company is without a surety.

See the bond, Transcript page 49.

There was only one notice of appeal given, and that was not at the time of judgment, and was never served on the Land Company.

See the notice, Transcript page 48.

Under such condition of the record, plaintiff in error, being the respondent in the State Court, moved the Court for a dismissal of the appeals, of the Land Company for want of a statutory bond, and of the Wright estate for want of a notice of appeal served on the Land Company; and cited the statutes, and the numerous and uniform rulings of the Court in like cases.

Hopkins vs. Satsop Ry. Co., 18th Wash. 679.

Starling vs. Burdette, 28th Wash. 261.
Dodge vs. Corliss, 27th Wash. 685.
Spokane & I. L. Co. vs. Loy, 21st Wash. 501.

In this last case the Court says on page 504: "It will be observed that the law does not repuire a bond on appeal to be executed by the appellant, but only in his behalf". And in a later case, decided since this case, (Aetna Ins. Co. vs. Thompson, 76 Pac. Rep., page 105) they reiterate the law of notice to be served.

This plaintiff never excepted to that construction. What she did except to and still excepts to is the refusal of the State Court to extend to plaintiff the protection of that law and that construction. She pointed out to the Court that the bond contained no surety for the Land Company, and asked that its appeal be dismissed. She pointed out that no notice of appeal had been served by the trustees of the Wright estate on their co-appellant, and asked that their appeal be also dismissed. She cited the statute and the Court's unbroken rulings thereon; and the Court persistently ignored her question raised and the basis of her motion, and instead of ruling thereon, assumed to rule upon another and uncontroverted proposition not raised in the case, namely, that an attorney has power to sign his client's name, and, so assuming to rule, denied the motion.

See Opinion, Transcript, page 57.

We submit that such refusal by the State Court to give this plaintiff the benefit and the protection of the statute and of the Court's own unbroken construction thereof, without even attempting to modify such construction, but

by evading the question raised, is a plain denial to this plaintiff of the equal protection of the laws; a denial, too, from which we can get no redress unless this Court will give us relief. If the State Court can thus at pleasure suspend the operation of the laws in individual cases, then the law is no protection, and the courts become mere respecters of persons.

We believe the Fourteenth Amendment to the Federal Constitution prohibits such denial of equal rights; and that the remedy for such wrong lies in the revisory powers of this Court; and that such remedy and its application have been recognized by this Court in the case of

Virginia vs. Rives, 100 U. S. 313,

where the Court says: "A state may exert her authority through different agencies, and those prohibitions" (of the Fourteenth Amendment) "extend to her action denying equal protection of the laws, whether it be by one of these agencies or by another; * * * by either the Legislative, the Executive or the Judicial departments of the state. * * * Denials of equal rights in the judicial tribunals of the state are left to the revisory powers of this Court."

We submit, therefore, that for each and every of the foregoing reasons the writ of error lies, and the motion to dismiss should be denied.

II.

ON THE MERITS.

STATEMENT OF THE CASE.

The plaintiff in error here was plaintiff below; and this is a controversy over the title to forty acres of Government land.

The questions involved require the construction of section 5 of the Act of Congress, approved March 3rd, 1887 (24 Stat. at Large, 557), as affecting the operation of the United States homestead laws; and the Fourteenth Amendment to the Constitution of the United States.

As to Section 5, the questions are these:

1st.—Is the said section in effect an act to quiet title?

2nd.—Does the said section in effect withdraw from the operation of the settlement laws of the United States any portions of the public lands, "and hold them, as it were, in mortmain"?

3rd.—Does the said section give a preference or superior right to the class of persons therein named over the settler under the homestead laws?

4th.—Does said section confer upon any person such a preference or superior right that, after his neglect to accept or apply for the benefits of said section until long after another with the approval of the Land Department has duly appropriated the land under the homestead laws and expended many hundred dollars and months of time in the improvement thereof, the first may then exercise his supposed preference or superior rights and oust the first from his homestead and his improvements?

5th.—Is a corporation a citizen within the meaning of said section 5?

And as to the Fourteenth Amendment, the question arising is this:

May the Supreme Court of the State of Washington deny to this plaintiff in error the protection of the law which it gives to all other litigants in said Court in like cases?

The foregoing questions of law arise in this case in the following manner:

The record herein shows that in February, 1897, plaintiff in error filed in the United States Land office at Olympia her application to enter as a homestead the land here in dispute, to-wit: the southwest quarter of the northwest quarter of section three (3), of township twenty (20), north of range two (2) east of the Willamette Meridian, in Pierce county, Washington. Her application was accepted by the Land Department, the entry duly made, fees paid, receipts given and all the law fully observed. In pursuance of her said entry, the plaintiff, in May following, went upon said land and built her house, barn and other outhouses, and improvements, of the value and cost of twelve hundred dollars, and then and there took up her abode and has ever since lived there as her home, and fully performed all the requirements of the homestead laws.

In August, 1897, and after all said improvements done and said home established, the defendant Tacoma Land Company made application to the Land Department to purchase said land from the Government, claiming the right so to do by virtue of section 5 of the Act of Congress approved March 3d, 1887 (24th Stat. at Large, p. 557), as the bona fide purchaser of said land from the Northern Pacific Railroad Company, in the year 1874, as part of said Company's grant from the Government, but being in fact excepted from said grant by the prior pre-emption filing thereon of one C. W. Kincade.

Pursuant to the Land Company's published notice, plaintiff appeared before the Department and resisted the Company's application, and urged, as reasons therefor,

her own accepted and perfected homestead entry, her established improvemnets and home and residence on said land, and that said Company was not a citizen within the meaning of the section under which it claimed.

The Land Office held that the Land Company had a preference or superior right to purchase the land over the completed and appropriated rights of the plaintiff under the homestead laws, and granted the Company's application and ordered the homestead entry of plaintiff cancelled. The regularity of the plaintiff's homestead application, entry, and all her proceedings thereunder was never at any time questioned. On appeal, the Honorable Commissioner of the General Land Office held that the Local Office had erred in allowing the Land Company's application while the plaintiff's homestead entry remained (transcript, page 17, line 13), but nevertheless affirmed the decision of the local office; and, on further appeal, the Honorable Secretary of the Interior made practically the same ruling.

The facts material to this controversy, and as found by the Honorable Secretary and Commissioner, are set out in their opinions (transcript, pp. 16 to 25), and by the Honorable Judge of the Superior Court trying the cause in his findings (transcript, pp. 41 to 45), and are, in brief, as follows:

That this land was within the limits of the grant to the Northern Pacific Railroad Company by joint resolution of Congress of May 31st, 1870, but was excepted from the operation of that grant by the prior pre-emption filing thereon of one C. W. Kincade.

Transcript, pp. 16, 21, 42.

That in 1874 the Railroad Company, assuming this land to be within the grant, attempted to sell and convey the same, included in a transfer of about twelve thousand acres, to the defendant in error, the Tacoma Land Company.

Transcript, pp. 17, 21, 42.

That on July 13th, 1896, in a contest over this same forty acres between one C. W. Corliss and the said Railroad Company, the Land Department held finally that the said forty acres was excepted from the said railroad grant by the said Kincade filing.

Transcript, pp. 18, 21, 43.

That in February following (1897) this plaintiff in error had applied to enter the land as her homestead, her application was duly accepted, the entry made, the land appropriated thereunder improved to the amount of twelve hundred dollars, her home there established, and ever since so held by her and so occupied, and all provisions of the homestead law fully complied with.

Transcript, pp. 17, 21, 41.

That not until August, 1897, did the Land Company attempt to avail itself of any rights it might have had under the said section 5 of the act of 1887, being more than ten years after the passage of the said act—more than one year after the Department's decision in the Corliss case touching this same land—and more than six months after plaintiff's homestead entry, and after all her improvements made and home established as aforesaid.

Transcript, pp. 17, 21, 43.

As before stated, the Land Department, upon Miss Ramsay's application, found this land to be of the proper class, of the public domain, and subject to homestead entry, and Miss Ramsay duly qualified to enter the same. And these findings have never been modified. But the Department held, notwithstanding said facts, that the Land Company had a preferred and superior right, under said section 5, over the plaintiff's appropriated and established homestead rights; and ordered the homestead entry cancelled and caused a patent to issue to the Land Company conveying the title to said land.

Upon such ruling and the issuance of the patent, plaintiff brought her suit in the Superior Court of the State of Washington for Pierce county, setting up a full and detailed statement of the facts, including the findings of the Honorable Secretary and Commissioner (transcript, pp. 1 to 15), and prayed judgment that the said patent and title thereunder be declared held in trust by the Land Company for plaintiff's benefit, and that a transfer of the legal title be decreed to her.

The Honorable Judge of the Superior Court found the facts as set forth in the opinions of the Honorable Secretary and Commissioner, and, further, that since the hearing in the Department the plaintiff had completed her five years' residence and fully performed all other requirements of the homestead laws, besides having duly tendered payment therefor as by law permitted after fourteen months' residence thereon, and granted the relief prayed.

Transcript, pp. 41 to 47.

On the appeal, the Supreme Court of the State of Washington reversed the judgment and decree of the Su-

perior Court, held that the aforesaid section 5 of the Act of 1887 gave to the Land Company preferred and superior rights over plaintiff's completed homestead rights, and dismissed her suit.

Transcript, pp. 57 to 60.

II.

SPECIFICATIONS OF ERRORS.

The errors committed by the Supreme Court and urged here are these:

1st: The Court erred in construing section 5 of the said Act of March 3rd, 1887 (24 Stat. at Large, p. 557) to be in effect an act to confirm title.

2nd: The Court erred in holding that section 5 authorized the withdrawal or operated to withdraw the lands described from entry under the homestead laws, namely: the Act of Congress of May 20th, 1822, as set forth in sections 2289 to 2317 inclusive of the Revised Statutes of the United States and acts amendatory thereto.

Transcript, p. 57.

3rd: The Court erred in holding that said section gave to the Land Company a preference right to purchase said land over plaintiff's rights thereto under said homestead laws.

Transcript, p. 59.

4th: The Court erred in holding that said section 5 gave to the Land Company such a preference and superior right over plaintiff's rights under said homestead laws that it, the said Land Company, could lay by and wait,

without attempting to claim or exercise its supposed rights under said section 5, until the plaintiff had completed her rights under said homestead laws and made the said land valuable by her improvements, and then step in and take all.

Transcript, pp. 59-60.

5th: The Court erred in holding that a corporation is a citizen within the meaning of said section 5.

Transcript, p. 59.

6th: The Court erred in denying to this plaintiff the equal protection of the laws by entertaining the appeal of these defendants in error, from the Superior Court of Pierce county, in the absence of the statutory bond and notice of appeal, held essential to jurisdiction on appeal in all other like cases.

Transcript, pp. 48, 49 and 57.

ARGUMENT.

Miss Ramsay's homestead entry and all her proceedings thereunder were in all respects regular and complete. No defect or omission therein is anywhere suggested in any of the findings or judgments had in the many stages of the cause. The sole reliance of defendants in error is on the said section 5 of the Act of 1887. That section in full is as follows:

"That where any said company shall have sold to citizens of the United States, or to persons who have declared their intentions to become such citizens, as part of its grant, lands not conveyed to or for the use of such com-

pany, said lands being the numbered sections prescribed in the grant and being co-terminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary government price for like lands, and thereupon patents shall issue therefor to said bona fide purchaser, his heirs or assigns: provided, that all lands shall be excepted from the provisions of this section which at the date of such sales, were in the bona fide occupation of adverse claimants under the pre-emption or homestead laws of the United States and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: provided, further, that this section shall not apply to lands settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases."

That this section is not a curative act in terms, appears upon inspection.

That it is not a curative act by implication appears upon consideration, because:

1st: The section assumes as its basis that the grant has failed as to certain lands, and is made to apply to such lands only as "are for any reason excepted from the operation of the grant."

If the lands were excepted from the grant there was then no title to cure; and if they were not excepted lands they were not within the class to be acquired under this section.

2nd: The section requires purchase and payment to the United States "at the ordinary government price for like lands."

It cannot be imputed to Congress that that body intended to "cure" the title of the deceived or mistaken purchaser from the railroad company, by requiring him again to purchase from the United States at the "ordinary government price." Such a cure is not consonant with the idea of protection to an innocent purchaser. It is much more reasonable to assume that Congress intended to provide a way available at option whereby such purchasers from the railroad company might be permitted to acquire title to the land, and thus save any improvements that might have been made for themselves and which they could not do without aid from Congress, and leaving them to their remedy against the railroad company for the failure of title, especially so as Congress had provided against loss to the railroad company from this cause by the enactment of the lieu-land laws.

And so the Superior Court construed the Act—to be permissive only in its effect, and not operative except at the election of the purchaser; and until such election to remain as other public land.

The defendants in error want to give the section the opposite effect—the effect of holding the land in mortmain; the effect of enabling them to wait, with the title in the Government, until plaintiff's appropriation and culti-

vation and buildings had made a valuable property which they might reach forth and gather in.

As early as the year 1885 this Court held that preemption and homestead entries excepted such lands from subsequent grants.

Ry. Co. vs. Dunmeyer, 113 U. S. 629.

At that time there was no relief available to purchasers of such lands from the railroad companies. In 1887 the Act was passed providing a way for relief of those who chose to avail themselves of its provisions; it was not compulsory; it required full payment to the government; it was this same section 5 under which defendants now seek to rob this plaintiff of her industry.

At the time of the passage of the act, if ever, the Land Company ought to have instituted its proceedings to purchase under said act. But it did not; it waited more than ten years; waited until after Corliss had waged his contest with the railroad company and it was declared that this land was excepted from the grant (in July); waited still until more than another year had passed and the land had been redeemed from a wilderness to a cultivated home. Then the Land Company's time for action had arrived, and for seven years the unequal contest has been waged between the Land Company and this homesteader.

But defendant's curative theory is inconsistent with its other argument—the preference or superior right theory. The very use of the terms "preference" and "superior" implies that the other, the homestead right remained; or, in other words, those terms imply that the said section five did not cut off the homestead rights as to such

lands. How long is this imaginary preference to continue? The statute makes no more mention of what time a preference shall continue than it does of any preference at all; the whole preference theory has to be supplied—read into the statute by the courts, if read at all. If Congress had intended that a preference should be given by the said section 5, or that any homestead or other rights to such lands, actual or potential, should be suspended, superceded or cut off altogether, it is a reflection on the intelligence of that body to presume that it would have left so important matter to mere conjecture. If, on the other hand, Congress did not have in mind such intent, we know of no authority for the Courts, in the absence of any expression in the statute, to assume such intent. That this land being excepted from the railroad grant by the pre-emption filing was and remained public land, and subject to the pre-emption and homestead laws at all times, is fully determined by this Court in the case of

Bardon vs. Northern Pacific R. Co., 12th [illegible]. Ct. Rep. 856.

But, aside from the mischief wrought by such judicial extension of the statute, the plain, ordinary rules of statutory construction forbid such interpretation. A statute will not be construed to repeal or modify a prior law except by direct expression or necessary implication.

The direct expression of repeal or modification being absent, the duty devolves on defendant to point out the "necessary implication" for the construction it asks. No attempt is made by defendants to point out such necessity, beyond their own wish. And, indeed, on inspection it will

appear that no such necessity exists. The language used in both the said section 5 and the homestead laws can be given its full, ordinary meaning and interpretation in both laws without repeal or modification of either. That such construction will be given always, in the absence of imperative necessity for a different construction by the language of the later statute, is a rule too familiar to require citations of authority. The necessity which will warrant a repeal or modification of one statute by another must arise from repugnancy or inconsistency in the language of the two; and repugnancy in principle merely is not sufficient. The rule is, that so long as both statutes can stand by any fair interpretation, that construction will be given which will give effect to both.

Sutherland on Statutory Construction, secs. 137-8.

But in the case in hand there is no repugnancy and no inconsistency in the two laws. The later law merely extends to certain persons the right to acquire by purchase certain public lands from the Government, without any attempt to suspend the rights of other persons under other laws; and so the trial Court found and set forth the law in his fourth and fifth conclusions of law.

Transcript, p. 43.

We respectfully submit that the Supreme Court of Washington had no authority to deny to this plaintiff her rights under the homestead laws by construing the same to be suspended or modified by the law of 1887, and that its decision and judgment of dismissal ought to be reversed.

CITIZENSHIP.

We think a corporation is not a citizen within the meaning of the said section 5.

The term citizen is construed to include corporations in certain mining laws, and practice acts; but in every case such construction is given because the context requires that interpretation; that is, because the language used in the act, taken together, requires such meaning to be given. But in this section 5 of the law of 1887 there is not one word, nor indeed in the whole act, that requires the construction that a corporation should be granted the right to acquire public land. Indeed, if the whole body of law for acquiring public lands be considered, there is repugnancy and inconsistency in the idea that corporations be included in the term "citizen." First, Congress never in terms gave to corporations the right to acquire public lands except for mining purposes and by special grants, but, on the contrary, has made special effort to preserve the public domain for individual settlers. Second, even where mining rights and special grants have been extended to corporations, it has always been on the ground of a public necessity. And, third, this same Congress which passed the Act of March 3rd, 1887, containing this section 5, passed another act, approved the same day, limiting the amount of land which corporations might acquire by any means to five thousand acres in any territory of the United States (as Washington then was), and providing further that all property "acquired, held or owned" in violation of the provisions of this act should be forfeited to the United States, and that if necessary the Attorney General should take steps to declare the forfeit.

Shee Chap. 340, 24th Stat. at Large, pp. 476-7.

The land which this Land Company had attempted to "acquire" from the railroad company by the purchase of which this forty acres was a part was far in excess of that limit, being about twelve thousand acres, as admitted by the pleadings herein (complaint, par. XIX, p. 13, and answer, par. XIII, p. 30 of transcript, which by code provision admits as true all allegations not denied).

Pierce's Code, Sec. 413.
Bal. Code, Sec. 4943.

And so this case presents the Land Company, a corporation, not claiming under any mining law; not claiming by any grant to itself; not claiming under any expressed statutory language—but claiming under an inference repugnant to purport and general intent of all the United States land laws, and even in direct contravention of the Chapter 340 above cited. We submit that the ruling that the company is a citizen within the meaning of the said section 5 is error and should be reversed.

The argument on the denial of the equal protection of the laws by the Supreme Court of the State, in refusing to consider the rule upon the grounds of our motion to dismiss the appeal of the respondents in the State Court, having been fully presented in our argument on the motion of defendants in error to dismiss, we do not think it necessary or proper to repeat it here, and can only say, in closing, that this case presents to our minds this picture—of a woman seeking to acquire a home under the laws which Congress has enacted as a special inducement to the citi-

zens of the United States, the plaintiff and those like her having accepted the proffered invitation and fully complied with all its requirements in spirit and in letter, she then asks the recompense held forth in the invitation—the title to the land she has reclaimed.

Opposed to her is this corporation—not claiming under any invitation from the Government, but by an inference only, and that, too, repugnant to the spirit of all the land laws; claiming only under an attempted but void purchase from the railroad company in 1874, but without having made a dollar's worth of improvements on the land during the twenty-three years between its assumed purchase and the homestead entry of plaintiff; making no attempt to take the title out of the Government or to acquire the land in any lawful way until after plaintiff's acceptance of and compliance with the invitation of the homestead laws—we cannot think the judgment of the State Court, wresting this woman's property from her and passing it over to the Land Company, can be sustained. It is not equity, and we do not believe it is the law; and we respectfully ask that the said judgment be reversed and that plaintiff's homestead rights be protected and established.

JOHN F. SHAFROTH,
JOHN C. STALLCUP,
J. W. A. NICHOLS,
Attorneys for Plaintiff in Error.